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No. 505

In the Supreme Court of the United States

OCTOBER TERM, 1958

QUEEN COHEN, PETITIONER

v.

PUBLIC HOUSING ADMINISTRATION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT PUBLIC HOUSING ADMINISTRATION IN OPPOSITION

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INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statement	2
Argument	4
Conclusion	5

CITATIONS

Cases:	
Alabama Power Co. v. *Ickes*, 302 U. S. 464	5
Comstock v. *Group of Investors*, 335 U. S. 211	4
Corn Products Co. v. *Commissioner*, 350 U. S. 46	4
Doremus v. *Board of Education*, 342 U. S. 429	5
Masssachusetts v. *Mellon*, 262 U. S. 447	5
Constitution and Statutes:	
Constitution of the United States:	
Fifth Amendment	2
Fourteenth Amendment	2
Civil Rights Act, 42 U. S. C. 1982	2
Lanham Act, 42 U. S. C. 1501–70	2
United States Housing Act of 1937, 42 U. S. C. 1401–33	2

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OPINIONS BELOW

The opinion of the United States District Court for the Southern District of Georgia (R. 208–214) is reported *sub nom. Heyward, et al.* v. *Public Housing Administration, et al.*, at 154 F. Supp. 589. The opinion of the United States Court of Appeals for the Fifth Circuit (Pet. App. 21–30) is reported at 257 F. 2d 73. Earlier opinions in this litigation, *sub nom. Heyward, et al.* v. *Public Housing Administration, et al.*, are reported at 135 F. Supp. 217 and 238 F. 2d 689.

JURISDICTION

The judgment of the Court of Appeals was entered on June 30, 1958 (Pet. App. 31). A timely petition

for rehearing was denied on August 11, 1958 (Pet. App. 32). The petition for a writ of certiorari was filed on November 8, 1958. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether the Public Housing Administration may be enjoined from paying federal funds to a municipal housing authority on the ground that public housing projects owned and operated by the local authority are maintained on a segregated basis, where both courts below found that the petitioner never attempted to apply for admission to any of those projects.

STATEMENT

This action was originally brought by eighteen Savannah residents who allegedly had been or would be displaced from the site of a low-rent housing project in Savannah known as "Fred Wessels Homes," which is owned and operated by the respondent Savannah Housing Authority (R. 1, 7, 8, 166–167). The complaint alleged that the Fred Wessels Homes were maintained on a segregated basis and that each of the plaintiffs had been denied admission to the project solely because of race (R. 8). It was also alleged that the Public Housing Administration, by financing the Fred Wessels Homes, had violated the plaintiff's rights under the Fifth and Fourteenth Amendments, the Civil Rights Act (42 U. S. C. 1982), and the provisions of the United States Housing Act of 1937 (42 U. S. C. 1401–33), and of the Lanham Act (42 U. S. C. 1501–70) (R. 2–3, 7). The relief sought was an injunction, declaratory judgment, and money damages (R. 3, 4, 16–19).

Before the trial of the action, all of the plaintiffs, except the petitioner Queen Cohen, voluntarily withdrew from the suit (R. 40). She conceded, at trial, that she had not filed written application for admission to the Fred Wessels Homes (R. 143). She testified, however, that "around 1952" she went to the project office, on the site of the project, to apply for an apartment, and was told by a man who was "sitting there" that "Negroes are not allowed here" (R. 131, 133). Although the petitioner was unable to identify the man to whom she spoke, her cousin, who testified that she accompanied the petitioner to the project office, identified the man as Millard Williams, a former manager of the Fred Wessels Homes, and the person to whom an application for admission to the project would have been made (R. 146, 151, 188, 189). For his part, Mr. Williams denied that he had ever seen the petitioner prior to the trial (R. 187–188). In addition, both he and W. H. Stillwell, Secretary and Executive Director of the Savannah Housing Authority, testified that, in 1952, there were no buildings on the Fred Wessels Homes site (R. 185, 189).

The District Court found that the petitioner "never made an application for admission in the Fred Wessels Homes or any other public housing project in Savannah" (R. 213). Accordingly, the court dismissed the action against the respondents (R. 215). The Court of Appeals affirmed. It held that "it is an understatement to say that" the District Court's finding that the petitioner never attempted to apply for admission "does not appear to be clearly erroneous * * *." (Pet. App. 27.) It further held that,

in the absence of an application or at least an attempt to apply, the petitioner lacked standing to maintain the action (Pet. App. 27–30).

ARGUMENT

Without reaching the substance of the petitioner's contentions, it is clear that she lacks the standing necessary to maintain this action.

Both of the courts below have resolved against petitioner the factual question as to whether she attempted to apply for admission to the Fred Wessels Homes. A settled rule of this Court makes concurrent findings of two courts below final here in the absence of exceptional error. *Comstock* v. *Group of Investors*, 335 U. S. 211, 214; *Corn Products Co.* v. *Commissioner*, 350 U. S. 46, 51. Petitioner has failed to demonstrate that exceptional error was committed. To the contrary, the finding that petitioner did not attempt to apply for admission is fully supported by the testimony of the officials of the Savannah Housing Authority. (See *supra*, p. 3.)

The first manifestation by the petitioner that she wished to become a resident in the Fred Wessels Homes was the institution of this suit. We do not contend that the petitioner must have filed a formal application before she could have acquired a sufficient interest to maintain this suit. But, as the court below correctly held, since she had not even evinced a desire to gain residence in the Fred Wessels Homes, she could hardly complain that she was denied admission.

The only relief sought by the petitioner which is applicable to the Public Housing Administration is

a declaration, together with an injunction, that the Public Housing Administration may not pay out federal funds to the Savannah Housing Authority for the construction, operation, and maintenance, by the Savannah Housing Authority, of a public housing project from which the petitioner, and other similarly situated Negroes, will be excluded solely because of their race. But petitioner clearly lacks standing to challenge the validity of the Public Housing Administration's disbursements. *Massachusetts* v. *Mellon*, 262 U. S. 447, 486–489; *Alabama Power Co.* v. *Ickes*, 302 U. S. 464, 478–479; *Doremus* v. *Board of Education*, 342 U. S. 429.[1]

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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[1] In their disposition of the case, the courts below did not have to consider other defenses, which were asserted by the Public Housing Administration, some of which we would urge are equally dispositive of the petitioner's complaint against that agency.

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